HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 07, 2019
86th Legislature, Number 60
The House convenes at 10 a.m.
Part One

The bills and joint resolutions analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

The House also will consider a Local, Consent, and Resolutions Calendar.

All HRO bill analyses are available online through TLIS, TLO, CapCentral, and the HRO website.

Dwayne Bohac
Chairman
86(R) - 60

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 07, 2019
86th Legislature, Number 60
Part 1

SUBJECT: Increasing the sales tax rate by 1 cent to decrease property taxes

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 6 ayes — Burrows, Guillen, Murphy, Noble, Sanford, Wray

2 nays — Martinez Fischer, E. Rodriguez

3 absent — Bohac, Cole, Shaheen

WITNESSES: For — Terry Holcomb, Republican Party of Texas; Roy Morales; (*Registered, but did not testify*: Adam Haynes, Conference of Urban Counties; Seth Rau, San Antonio ISD; Grover Campbell, Texas Association of School Boards; Missy Bender, Texas School Coalition; Ryan Ash, Texas Taxpayers and Research Association; Gail Stanart)

Against — (*Registered, but did not testify*: Kendall Smith, Accent Food Services, TMVA; Joe Hamill, American Federation of State, County, and Municipal Employees; Jorge Martinez, Americans For Prosperity, The LIBRE Initiative, Concerned Veterans for America; Adam Cahn, Cahnman's Musings; Dick Lavine, Center for Public Policy Priorities; Maggie Stern, Children's Defense Fund; Egan Little, L C Vending, TMVA; Mary Cullinane, League of Women Voters of Texas; Fatima Menendez, Mexican American Legal Defense and Educational Fund; Rene Lara, Texas AFL-CIO; Vance Ginn, Texas Public Policy Foundation; Bill Kelberlau; Crystal Main; Michael Openshaw;)

On — (*Registered, but did not testify*: Priscilla Camacho, Dallas Regional Chamber)

BACKGROUND: Tax Code ch. 151 imposes state sales and use taxes on the sale, storage, use, or other consumption of taxable items in the state at the rate of 6.25 percent.

Education Code sec. 42.2516 defines the state compression percentage as the percentage of a school district's adopted maintenance and operations tax rate for the 2005 tax year that serves as the basis for state funding.

If not established by appropriation for a school year, the commissioner of education determines the state compression percentage based on the percentage by which a district is able to reduce the district's maintenance and operations tax rate for that year, as compared to the district's adopted maintenance and operations tax rate for the 2005 tax year, as a result of state funds appropriated for that year from the property tax relief fund or from another funding source available for school district property tax relief.

DIGEST:

CSHB 4621 would increase the state rate of sales and use tax to 7.25 percent. State sales and use taxes collected in excess of the current rate of 6.25 percent could be used only to provide property tax relief through the reduction of the state compression percentage.

The bill would take effect January 1, 2020, but only if the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, to provide property tax relief by reducing school district maintenance and operations ad valorem tax rates and increasing the state sales and use tax rates was approved by the voters. If that amendment was not approved, the bill would have no effect.

SUPPORTERS SAY:

CSHB 4621 would provide much-needed property tax relief by way of a 1-cent increase in the state sales tax, giving peace of mind to Texans that they no longer would be taxed out of their homes and businesses and promoting continued economic growth.

Fairness. The sales tax is less burdensome and more efficient than school property taxes, and increasing the sales tax by 1 cent could raise billions of dollars for property tax relief.

In many Texas communities, property taxes have been growing faster than average income, imposing a substantial financial burden on taxpayers. Rising property taxes have caused Texans to be taxed out of their homes, not purchase homes at all, or go out of business. According to a March 2019 University of Texas/Texas Tribune poll, nearly 60 percent of Texas voters said they paid too much in property taxes. Increasing the sales tax by 1 cent to lower property taxes would provide these Texans with long-

term property tax relief.

The sales tax is less burdensome than the property tax because it paid only when a taxable item is purchased. Property taxes are paid year after year, with costs compounding over time, and hit low- and fixed-income Texans especially hard.

Property taxes are also less fair than sales taxes in that they rely on subjective valuations of appraisal districts, with tax rates being set by local governments with little taxpayer input. In contrast, sales taxes are based on objective market transactions with rates that have remained fairly stable over time. Increasing the sales tax also would spread the costs of government to people who visit Texas from out-of-state, saving in-state taxpayers money.

The state has extensive experience with sales taxes, which allows for accurate estimates of the revenue that would be raised by increasing the sales tax. This experience would allow the state to avoid the outcome of past attempts to lower property taxes through the margin tax and provide more permanent property tax relief.

Stability. The bill would stabilize property tax growth and give families more control over their tax bills. While families can choose to consume less in order to reduce the amount they pay in sales taxes, most cannot choose the home they own from year to year to reduce their property tax burden. By increasing the state's reliance on sales tax, the bill would empower Texans to determine how much they paid to state and local governments.

Economy. Increasing the sales tax to lower property taxes also would promote continued economic growth. Reducing property taxes means reducing taxes on capital, which would allow businesses to make more investments and create more jobs in the state. A property tax reduction also could lead to less expensive consumer products because retailers' rents would be lower, and the savings likely would be passed on to tenants and consumers.

OPPONENTS SAY:

CSHB 4621 would increase an unfair tax that historically has proven to be an unstable source of revenue and could jeopardize the provision of public services and potentially put Texas businesses at a competitive disadvantage compared to businesses in other states.

Fairness. The bill would unfairly shift the state's tax burden onto those least able to pay it by increasing the sales tax to pay for a decrease in property taxes. If the proposed sales tax increase were enacted, Texas would be tied with California for having the highest state sales tax rate in the nation. This increase would disproportionately affect lower income individuals, as they often pay a higher percentage of their income toward sales tax than their wealthier neighbors.

According to the Legislative Budget Board, taxpayers would not begin to benefit from the tax swap unless they had an annual income of at least $100,000, and households with an income of between $100,000 and $150,000 would receive only modest savings. According to a March 2019 University of Texas/Texas Tribune poll, more than 70 percent of voters disapprove of increasing the sales tax.

Stability. The bill would replace a relatively stable tax base with one that is less stable. Sales taxes are not a reliable source of revenue because they vary based on consumer spending. Over the past 20 years, sales tax revenues have decreased five times, while property values decreased only once.

The state budget is already highly dependent on sales tax revenue. The sensitivity of sales tax to economic fluctuations has caused budgetary difficulties in the past, leading to cutbacks in public services. Increasing reliance on sales tax would make public services even more vulnerable to economic downturns.

Economy. Increasing the sales tax could harm the state's economy by increasing prices for consumers. Higher prices would put Texas businesses at a competitive disadvantage, discouraging shoppers from neighboring states from coming to Texas and making the state a less attractive place to locate jobs and investment.

OTHER OPPONENTS SAY:

CSHB 4621 would not provide lasting property tax relief and would increase the size of government unnecessarily. The state attempted to use the margin tax to buy down property taxes in the past with little success.

NOTES:

CSHB 4621 is the enabling legislation for HJR 3 by Huberty, which would amend the Texas Constitution to impose the state sales and use tax at a rate of 7.25 percent, with the resulting increase in tax revenue to be used to provide property tax relief by reducing school district maintenance and operations tax rates. HJR 3 is on the Constitutional Amendments Calendar for second reading consideration today.

SUBJECT: Amending the Texas Constitution to reduce property tax with sales tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 6 ayes — Burrows, Guillen, Murphy, Noble, Sanford, Wray

2 nays — Martinez Fischer, E. Rodriguez

3 absent — Bohac, Cole, Shaheen

WITNESSES: For —Terry Holcomb, Republican Party of Texas; Missy Bender, Texas School Coalition; Roy Morales; (*Registered, but did not testify*: Drew Scheberle, Austin Chamber of Commerce; Adam Haynes, Conference of Urban Counties; Seth Rau, San Antonio Independent School District; Grover Campbell, Texas Association of School Boards; Ryan Ash, Texas Taxpayers and Research Association; Dustin Cox; Maria Person; Gail Stanart)

Against — Kendall Smith, Accent Food Services, Texas Merchandise Vending Association; Dick Lavine, Center for Public Policy Priorities; Egan Little, L C Vending, TMVA; Vance Ginn, Texas Public Policy Foundation; (*Registered, but did not testify*: Joe Hamill, American Federation of State, County, and Municipal Employees; Jorge Martinez, Americans For Prosperity, The LIBRE Initiative, Concerned Veterans for America; Adam Cahn, Cahnman's Musings; Maggie Stern, Children's Defense Fund; Mary Cullinane, League of Women Voters of Texas; Fatima Menendez, Mexican American Legal Defense and Educational Fund; Rene Lara, Texas AFL-CIO; Kristine Garaña; Bill Kelberlau; Crystal Main; Michael Openshaw;)

On — Luke Macias; (*Registered, but did not testify*: Priscilla Camacho, Dallas Regional Chamber)

BACKGROUND: Tax Code ch. 151 imposes state sales and use taxes on the sale, storage, use, or other consumption of taxable items in the state at the rate of 6.25 percent.

DIGEST:

CSHJR 3 would amend the Texas Constitution to increase the rate of sales and use taxes imposed on the sale, storage, use, or other consumption of taxable items in the state to 7.25 percent. The resulting increase in net revenue could be used only to provide property tax relief by reducing school district maintenance and operations ad valorem tax rates in the manner provided by general law.

This amendment would apply to taxes imposed on or after January 1, 2020. The Legislature could provide by general law for the administration of this amendment and could increase the rates of, modify the application of, or repeal the taxes.

The ballot proposal would be presented to voters at an election on November 5, 2019, and would read: "The constitutional amendment to provide property tax relief by reducing school district maintenance and operations ad valorem tax rates and increasing state sales and use tax rates."

SUPPORTERS SAY:

CSHJR 3 would provide much-needed property tax relief by way of a 1-cent increase in the state sales tax, giving peace of mind to Texans that they no longer would be taxed out of their homes and businesses and promoting continued economic growth.

Fairness. The sales tax is less burdensome and more efficient than school property taxes, and increasing the sales tax by 1 cent could raise billions of dollars for property tax relief.

In many Texas communities, property taxes have been growing faster than the average income, imposing a substantial financial burden on taxpayers. Rising property taxes have caused Texans to be taxed out of their homes, not purchase homes at all, or go out of business. According to a March 2019 University of Texas/Texas Tribune poll, nearly 60 percent of Texas voters said they paid too much in property taxes. Increasing the sales tax by 1 cent to lower property taxes would provide these Texans with long-term property tax relief.

The sales tax is less burdensome than the property tax because it is paid only when a taxable item is purchased. Property taxes are paid year after

year, with costs compounding over time, and hit low- and fixed-income Texans especially hard.

Property taxes are also less fair than sales taxes in that they rely on subjective valuations of appraisal districts, with tax rates being set by local governments with little taxpayer input. In contrast, sales taxes are based on objective market transactions with rates that have remained fairly stable over time. Increasing the sales tax also would spread the costs of government to people who visit Texas from out-of-state, saving in-state taxpayers money.

The state has extensive experience with sales taxes, which allows for accurate estimates of the revenue that would be raised by increasing the sales tax. This experience would allow the state to avoid the outcome of past attempts to lower property taxes through the margin tax and provide more permanent property tax relief.

Stability. CSHJR 3 would stabilize property tax growth and give families more control over their tax bills. While families can choose to consume less in order to reduce the amount they pay in sales taxes, most cannot choose the home they own from year to year to reduce their property tax burden. By increasing the state's reliance on sales tax, CSHJR 3 would empower Texans to determine how much they paid to state and local governments.

Economy. Increasing the sales tax to lower property taxes also would promote continued economic growth. Reducing property taxes means reducing taxes on capital, which would allow businesses to make more investments and create more jobs in the state. A property tax reduction also could lead to less expensive consumer products because retailers' rents would be lower, and the savings likely would be passed on to tenants and consumers.

OPPONENTS SAY:

CSHJR 3 would increase an unfair tax that historically has proven to be an unstable source of revenue and could jeopardize the provision of public services and potentially put Texas businesses at a competitive disadvantage compared to businesses in other states.

Fairness. CSHJR 3 would unfairly shift the state's tax burden onto those least able to pay it by increasing the sales tax to pay for a decrease in property taxes. If the proposed sales tax increase were enacted, Texas would be tied with California for having the highest state sales tax rate in the nation. This increase would disproportionately affect lower income individuals, as they often pay a higher percentage of their income toward sales tax than their wealthier neighbors.

According to the Legislative Budget Board, taxpayers would not begin to benefit from the tax swap unless they had an annual income of at least $100,000, and households with an income of between $100,000 and $150,000 would receive only modest savings. According to a March 2019 University of Texas/Texas Tribune poll, more than 70 percent of voters disapprove of increasing the sales tax.

Stability. CSHJR 3 would replace a relatively stable tax base with one that is less stable. Sales taxes are not a reliable source of revenue because they vary based on consumer spending. Over the past 20 years, sales tax revenues have decreased five times, while property values decreased only once.

The state budget is already highly dependent on sales tax revenue. The sensitivity of sales tax to economic fluctuations has caused budgetary difficulties in the past, leading to cutbacks in public services. Increasing reliance on sales tax would make public services even more vulnerable to economic downturns.

Economy. Increasing the sales tax could harm the state's economy by increasing prices for consumers. Higher prices would put Texas businesses at a competitive disadvantage, discouraging shoppers from neighboring states from coming to Texas and making the state a less attractive place to locate jobs and investment.

OTHER OPPONENTS SAY:

CSHJR 3 would not provide lasting property tax relief and would increase the size of government unnecessarily. The state attempted to use the margin tax to buy down property taxes in the past with little success.

NOTES:

HB 4621 by Huberty, the enabling legislation for CSHJR 3, is set for

second-reading consideration today on the Major State Calendar.

According to the Legislative Budget Board, CSHJR 3 would have a negative impact of $177,289 through fiscal 2020-21 for costs to publish the resolution.

SUBJECT: Creating the Texas Commission on Judicial Selection

COMMITTEE: House Administration — committee substitute recommended

VOTE: 10 ayes — Geren, Howard, Anchia, Anderson, Flynn, Ortega, Parker, Sanford, Thierry, E. Thompson

1 nay — Sherman

WITNESSES: For — Joanne Richards, Common Ground for Texans; (*Registered, but did not testify*: Dave Jones, Clean Elections Texas; Anthony Gutierrez, Common Cause Texas; Amanda Boudreault, League of Women Voters Texas; Lee Parsley, Texans for Lawsuit Reform; Michael Garcia, Texas Association of Manufacturers; Lisa Kaufman, Texas Civil Justice League)

Against — None

DIGEST: CSHB 3040 would establish the Texas Commission on Judicial Selection to study and review the method by which certain judges and justices were selected for office.

Study. The commission would be required to study statutory county court judges, probate court judges, district judges, justices of the courts of appeals, judges of the Texas Court of Criminal Appeals, and justices of the Texas Supreme Court.

The study would have to consider the fairness, effectiveness, and desirability of selecting the judicial officers specified by the bill through partisan elections, as well as judicial selection methods proposed or adopted by other states. The merits of using a public member board to nominate or assess the qualifications of candidates for judicial office also would have to be considered.

Alternative methods for selecting judicial officers would have to be assessed, including:

- lifetime appointment;

- appointment for a term;
- appointment for a term, followed by a partisan election;
- appointment for a term, followed by a nonpartisan election;
- appointment for a term, followed by a nonpartisan retention election;
- partisan election for an open seat, followed by a nonpartisan retention election for incumbents; and
- any other method or combination of methods for selecting a judicial officer described by the bill.

The Texas Commission on Judicial Selection. The Texas Commission on Judicial Selection would consist of 15 members appointed as follows:

- four members appointed by the governor;
- four members appointed by the lieutenant governor, including three senators, with at least one member of the same political party as the lieutenant governor and one member of a different party;
- four members appointed by House speaker, including three members of the House of Representatives, with at least one representative that was a member of the same political party as the speaker and one representative that was a member of a different party;
- one member appointed by the chief justice of the Supreme Court of Texas;
- one member appointed by the presiding judge of the Texas Court of Criminal Appeals; and
- one member appointed by the board of directors of the State Bar of Texas.

Board members would not be entitled to compensation but could receive reimbursement for certain expenses. The bill would require the governor, lieutenant governor, and House speaker to coordinate to ensure that the members appointed to the commission reflected, to the extent possible, the racial, ethnic, and geographic diversity of Texas and include individuals who were attorneys and individuals who were not attorneys.

The governor would be required to designate a presiding officer for the

commission, and the commission would convene at the call of the presiding officer.

Requirements. By December 31, 2020, the commission would be required to submit to the governor and the Legislature a report on the commission's findings and recommendations on a method or methods for selecting for office judges listed in the bill that ensured a fair, impartial, qualified, competent, and stable judiciary. The report would have to include specific recommendations on constitutional and statutory changes that appeared necessary from the results of the study.

The Office of Court Administration of the Texas Judicial System would be required to provide necessary administrative support to the commission. The office would be required to implement a provision of the bill only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate such funding, the office could implement a provision of the bill using other appropriations that were available for that purpose.

The commission would be abolished January 2, 2021.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $373,000 to general revenue related funds through fiscal 2020-21.

SUBJECT: Creating alternative accountability plans for specialized support campuses

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Huberty, Bernal, Allen, Ashby, K. Bell, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

2 absent — Allison, Dutton

WITNESSES: For — Chad Ouellette and Debra Ready, Austin ISD; Christine Broughal, Texans for Special Education Reform; Maureen Benschoter; Mara LaViola; (*Registered, but did not testify*: Jacquie Benestante, Autism Society of Texas; Steven Aleman, Disability Rights Texas; Brenda Koegler, League of Women Voters of Texas; Seth Rau, San Antonio ISD; Kristin McGuire, TCASE; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Grover Campbell, Texas Association of School Boards; Mark Terry, Texas Elementary Principals and Supervisors Association; Linda Litzinger, Texas Parent to Parent; Dee Carney, Texas School Alliance; Jen Ramos, Texas Young Democrats; Amanda Brownson, Texas Association of School Business Officials; Knox Kimberly, Upbring; and 12 individuals)

Against — (*Registered, but did not testify*: Bill Kelberlau; Julie Ross)

On — (*Registered, but did not testify*: Jamie Crowe and Eric Marin, Texas Education Agency)

BACKGROUND: Some have suggested that certain school campuses that enroll only students who receive special education services and who have intensive cognitive and medical needs should qualify for an alternative accountability plan.

DIGEST: CSHB 2797 would create a system for evaluating specialized support campuses, which would be defined as a school district campus that:

- had a campus identification number;
- served students enrolled in any grade level at which state standardized exams were administered; and
- had a student enrollment in which at least 90 percent of students received special education services and a significant percentage were required to take a STAAR alternative exam and were unable to provide an authentic academic response on the exam.

The commissioner of education, in consultation with administrators and teachers at specialized support campuses, parents and guardians of students, and other stakeholders, would have to establish by rule appropriate accountability guidelines for use by a specialized support campus in developing an alternative accountability plan based on the specific student population served by the campus.

Based on those guidelines, a specialized support campus could develop and submit to the commissioner for approval an alternative accountability plan tailored to its student population. The commissioner could approve the plan only if it followed the guidelines and complied with applicable federal law.

By December 1, 2022, the commissioner would have to submit to the governor, lieutenant governor, House speaker, and certain legislative committees a report on the effectiveness of the bill in evaluating specialized support campuses and any recommendations for legislative or other action.

The bill would apply beginning with the 2019-2020 school year and the bill's provisions would expire September 1, 2023.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Authorizing merger agreements among certain hospitals

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — S. Thompson, Wray, Frank, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

3 absent — Allison, Coleman, Guerra

WITNESSES: For — Brad Holland, Hendrick Health System; Shane Plymell, Shannon Medical Center and Shannon Clinic; (*Registered, but did not testify*: Linda Townsend, CHRISTUS Health; Denise Rose, Community Health Systems; Norm Archibald and Jeremy Walker, Hendrick Medical Center; John Hawkins, Texas Hospital Association; John Henderson and Don McBeath, Texas Organization of Rural and Community Hospitals)

Against — None

On — (*Registered, but did not testify*: Tori Grady, Kristi Jordan, Rachel Turner, Health and Human Services Commission)

BACKGROUND: Some observers have noted that Texas leads the nation in rural hospital closures and have suggested that rural hospitals would benefit from having additional resources, such as merger agreements, to deal with challenges and improve health care services.

DIGEST: HB 3301 would allow two or more hospitals, defined as nonpublic general or special hospitals and private mental hospitals, to enter into merger agreements. The bill would apply to a merger agreement among hospitals located within a county that contained two or more hospitals and had a population of:

- less than 100,000 and was not adjacent to a county with at a population of 250,000 or more; or
- between 100,000 and 150,000 and was not adjacent to a county

with a population of 100,000 or more.

Certificate of public advantage. The bill would establish that no merger agreement could receive immunity from state and federal antitrust laws unless the Health and Human Services Commission (HHSC) issued a certificate of public advantage governing the merger.

One or more parties to a merger could submit an application to HHSC for a certificate of public advantage and would have to provide certain documentation. HHSC could assess an application fee of no more than $75,000.

The bill would require HHSC and the attorney general to review a certificate of public advantage application. HHSC would have to grant or deny the application by the 120th day after the date it was filed.

HHSC would have to issue the certificate if the commission determined that:

- the proposed merger would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services; and
- the likely benefits would outweigh any disadvantages attributable to a reduction in competition that could result from the proposed merger.

To make the determination, HHSC would have to consider the merger's effect on certain nonexclusive factors, including:

- the quality and price of hospital and health care services;
- the preservation of sufficient hospitals within a geographic area to ensure public access to acute care;
- the cost efficiency of services, resources, and equipment provided or used by hospitals party to the merger;
- the ability of health care payors to negotiate payment and service arrangements with hospitals proposed to be merged; and
- the extent of any reduction in competition among physicians, allied

health professionals, other health care providers, or other persons.

The bill would require HHSC to maintain records of all approved merger agreements.

A hospital resulting from a merger agreement could voluntarily terminate its certificate of public advantage by giving HHSC notice at least 30 days before the date of termination.

HHSC would be required annually to review an approved certificate. The attorney general also annually could review the certificate, and HHSC would not be permitted to complete its review until the attorney general has determined whether to conduct a review and, if so, had the opportunity to conduct the review.

Supervision. The bill would require HHSC to supervise each hospital operating under a certificate of public advantage to ensure that the hospital furthered the purposes of the bill.

Rate increases for hospital services would have to receive prior approval from HHSC. At least 90 days before the implementation of any proposed rate increases for inpatient or outpatient hospital services, a hospital would have to submit to HHSC any proposed rate increases for those services and any information concerning costs, patient volume, acuity, payor mix, and other requested information.

The bill would require hospitals to submit proposed reimbursement rate increases at least 60 days before the execution date.

HHSC would have to approve a proposed rate increase if:

- the rate likely would benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services and the ability of hospital administrators to operate health care facilities and take measures to improve public health; and
- the rate would not inappropriately exceed competitive rates for comparable services in the hospital's market area.

By the 30th day before the implementation of the proposed rate increase, HHSC would have to notify the hospital of the commission's decision to approve, deny, or modify the proposed rate increase.

HHSC would require a hospital operating under a certificate of public advantage to adopt a corrective action plan if the commission determined that a hospital activity did not benefit the public and no longer met certain standards.

HHSC could assess an annual supervision fee of no more than $75,000 against each hospital operating under a certificate.

Investigation. The bill would allow the executive commissioner of HHSC to investigate the hospital's activities and to require the hospital to perform or refrain from certain actions if the commission determined the hospital was not compliant with the bill's provisions.

Judicial review and court proceedings. The bill would allow a person to appeal HHSC's final decision on a certificate of public advantage application by filing a petition for judicial review in a Travis County district court. The district court would have to conduct the review sitting without a jury and could reverse HHSC's decision regarding revocation of a certificate of public advantage under certain circumstances.

The bill would allow the attorney general to require the attendance and testimony of witnesses and the production of documents in Travis County or the applicant's county for the purpose of investigating whether the merger agreement satisfied the standards as listed in the bill.

Other provisions. The bill would require each hospital to submit an annual report to HHSC. The report would have to include information on:

- the benefits attributable to the issuance of the certificate;
- the hospital's actions in furtherance of any commitments made by the parties to the merger or to comply with the terms imposed by HHSC as a condition for merger approval;
- a description of hospital activities under the merger;
- the price, cost, and quality of and access to health care; and

- compliance with the issuance of the certificate.

The executive commissioner of HHSC would adopt rules to administer and implement the bill's provisions.

The bill would take effect September 1, 2019.

SUBJECT: Establishing a program to reduce border agricultural inspection wait times

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 7 ayes — Springer, Anderson, Beckley, Buckley, Burns, Fierro, Raymond

0 nays

2 absent — Meza, Zwiener

WITNESSES: For — Luis Bazan and Tony Martinez, Pharr International Bridge; Bret Erickson, Texas International Produce Association; (*Registered, but did not testify*: Michael Vargas, City of Pharr; Shayne Woodard, Wonderful Citrus; and six individuals)

Against — None

On — (*Registered, but did not testify*: Dan Hunter, Texas Department of Agriculture)

BACKGROUND: Some have suggested that wait times for agricultural inspections of vehicles at ports of entry along Texas' border with Mexico are too long due to a lack of federal inspectors, causing congestion at the ports and negatively affecting the state's economy.

DIGEST: HB 2155 would establish the Trade Agricultural Inspection Grant Program, which would be administered by the Texas Department of Agriculture (TDA) and provide grants to nonprofit organizations in order to reduce wait times for agricultural inspections of vehicles at ports of entry along the Texas-Mexico border.

TDA would have to establish procedures to administer the grant program, including for the submission and evaluation of proposals. The department would request and evaluate proposals and award grants based on a proposed program's quantifiable effectiveness and potentially positive impact on Texas' agricultural processing industry. Grants could be made only to organizations that had demonstrated experience working with

border inspection authorities to reduce border crossing wait times.

TDA would be required to enter into a contract that included performance requirements with each grant recipient, and the department would have to monitor and enforce the contract's terms. Contracts would have to authorize TDA to recoup grant money from a recipient if the recipient failed to comply with the contract's terms.

To be eligible to receive a grant under the program, a nonprofit organization would have to provide matching funds, and TDA would have to certify such funds were available before awarding a grant. A grant issued under the program could not exceed the amount of matching funds available.

Grant recipients could use grant money received under the program only to pay for activities directly related to the grant program's purpose. Grant money could be used to reimburse a federal governmental agency that provided additional border agricultural inspectors or paid overtime to inspectors at ports of entry along the border at the request of the grant recipient.

The total amount of grants awarded under the bill could not exceed $725,000 for the duration of the program, which would expire on September 1, 2021, unless continued by the Legislature. TDA could solicit and accept gifts, grants, and donations from any source for the purpose of awarding grants under the program.

By January 15, 2021, TDA would have to submit a report to the Legislature that included an evaluation of agricultural inspections affected by the program and the extent to which the program had reduced wait times for agricultural inspections at the border.

The bill would take effect September 1, 2019.

NOTES: According to the Legislative Budget Board, the bill would have a positive impact of $725,000 to general revenue related funds through fiscal 2020-21.

SUBJECT: Prohibiting misrepresentation of the origin of a telemarketing call

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Martinez Fischer, Darby, Collier, Moody, Parker, Patterson, Shine

1 nay — Beckley

1 absent — Landgraf

WITNESSES: On — Brad Schuelke, Office of the Attorney General

BACKGROUND: The Texas Telemarketing Disclosure and Privacy Act, under Business and Commerce Code ch. 304, regulates telemarketing calls and provides for civil penalties and enforcement. It defines a telemarketing call as an unsolicited telephone call made to solicit a sale of a consumer good or service, solicit an extension of credit for a consumer good or service, or obtain information that may be used to solicit a sale or to extend credit for the sale.

DIGEST: HB 1992 would prohibit a telemarketer from causing misleading information to be transmitted to a recipient's caller identification service or device or otherwise misrepresenting the origin of a telemarketing call.

The bill would provide an exception for a telemarketer calling on behalf of another person, in which case the telemarketer could substitute the name and telephone number of that person for the telemarketer's own name and number.

The bill would take effect September 1, 2019.

SUBJECT: Requiring certain health plans to cover ECI services

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Lucio, Oliverson, G. Bonnen, Lambert, Paul, C. Turner, Vo

0 nays

2 absent — S. Davis, Julie Johnson

WITNESSES: For — Kate Johnson-Patagoc, Texas Association for Behavior Analysis Public Policy Group; (*Registered, but did not testify*: Jacquie Benestante, Autism Society of Texas; Anne Dunkelberg, Center for Public Policy Priorities; Christina Hoppe, Children's Hospital Association of Texas; Chris Masey, Coalition of Texans with Disabilities; Lauren Rangel, Easterseals Central Texas; Marilyn Hartman, National Alliance on Mental Illness-Austin; Greg Hansch, National Alliance on Mental Illness-Texas; Will Francis, National Association of Social Workers-Texas; Christine Broughal, Texans for Special Education Reform; Lauren Spreen, Texas Academy of Family Physicians; Shannon Meroney, Texas Association of Health Underwriters; Lee Johnson, Texas Council of Community Centers; Clayton Stewart, Texas Medical Association; Linda Litzinger, Texas Parent to Parent; Clayton Travis, Texas Pediatric Society; Nataly Sauceda, United Ways of Texas)

Against — (*Registered, but did not testify*: Annie Spilman, NFIB; Jessica Boston, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans)

On — (*Registered, but did not testify*: Rachel Bowden, Texas Department of Insurance)

BACKGROUND: Insurance Code ch. 1367, subch. E requires certain health benefit plans to offer rehabilitative and habilitative therapy coverage for children, including nutritional evaluations and occupational, physical, and speech services. Health plans that provide coverage for these therapies must cover the amount, duration, scope, and service setting established in the child's

individualized family service plan.

The Early Childhood Intervention (ECI) program is a non-Medicaid program funded jointly by the state and federal governments. The program provides certain services to children up to age 3 who have disabilities or developmental delays.

DIGEST:

HB 1635 would expand the list of rehabilitative and habilitative therapies for children that certain health benefit plans would be required to cover. The list would include:

- specialized skills training by a certified early intervention specialist;
- applied behavior analysis treatment by a licensed behavior analyst or psychologist; and
- case management provided by a licensed practitioner of the healing arts or a certified early intervention specialist.

Applicability. The bill would expand the list of health plans required to cover rehabilitative and habilitative therapies to include:

- a consumer choice of benefits plan;
- a basic plan under the Texas Public School Retired Employees Group Benefits Act; and
- a primary care coverage plan under the Texas School Employees Uniform Group Health Coverage Act.

Exceptions. HB 1635 would not apply to a qualified health plan, as defined by the federal Affordable Care Act, to the extent a determination was made that:

- the bill would require the plan to offer benefits in addition to the federal essential health benefit requirements; and
- the state would be required to defray the cost of the bill's mandated benefits.

Coverage. The bill would authorize the required coverage for specialized

skills training to have an annual limit of $9,000, including case management costs, for each child. A health benefit plan could not apply the annual limit to other required rehabilitative and habilitative therapy coverage. The limit also could not be applied to coverage required by any other law, including coverage for autism spectrum disorder and the state Medicaid program.

The bill would establish that a health plan prior authorization requirement would be satisfied if the service was specified in a child's individualized family service plan.

Other provisions. Subject to the federal Individuals with Disabilities Education Act (IDEA), Part C, the bill would require a child to exhaust available coverage under the bill before the child could receive benefits provided by this state for early childhood intervention services. The bill would establish that these provisions would not reduce the state or federal government's obligation under IDEA, Part C.

The bill would take effect September 1, 2019, and would apply only to a health benefit plan issued or renewed on or after January 1, 2020.

SUPPORTERS SAY:

HB 1635 would provide access to needed services for children up to age 3 who have disabilities and developmental delays by requiring health plans to cover early childhood intervention (ECI) services. In recent years, many ECI providers have withdrawn from the statewide program due to financial reimbursement issues and the inability to serve the increasing number of children eligible for ECI services. Establishing another option for children to receive these crucial services would reduce state and school costs by minimizing the need for special education services later in a child's life.

OPPONENTS SAY:

HB 1635 would create another mandate for health insurance plans by requiring them to cover certain rehabilitative services for children, which would increase health plan costs. These costs could be passed on to other consumers through higher premiums.

SUBJECT: Creating a fund to help local governments upgrade voting equipment

COMMITTEE: Elections — committee substitute recommended

VOTE: 8 ayes — Klick, Cortez, Bucy, Burrows, Cain, Fierro, Israel, Middleton

1 nay — Swanson

WITNESSES: For — Sabra Srader, Texas Association of Elections Administrators (TAEA); (*Registered, but did not testify*: Chase Bearden and Dennis Borel, Coalition of Texans with Disabilities; Amanda Gnaedinger, Common Cause Texas; Joanne Richards, Common Ground for Texans; Heather Hawthorne, County and District Clerks' Association of Texas; Jim Allison, County Judges and Commissioners Association of Texas; Charles Reed, Dallas County Commissioners Court; Daniel Greer, Direct Action Texas; Molly Broadway, Disability Rights Texas; Cinde Weatherby, League of Women Voters of Texas; Lon Burnam, Public Citizen; Russell Schaffner, Tarrant County; Nanette Forbes, Texas Association of Counties; Jenifer Favreau, Texas Association of Elections Administrators; Windy Johnson, Texas Conference of Urban Counties; Glen Maxey, Texas Democratic Party; Shanna Igo, Texas Municipal League; Aryn James, Travis County Commissioners Court; Karen Collins; Julie Gilberg; Idona Griffith; Elisa Saslavsky; Arthur Simon)

Against — Ed Johnson; Kay Tyner; (*Registered, but did not testify*: Alan Vera, Harris County Republican Party Ballot Security Committee; Kathaleen Wall, Republican Party of Texas State Republican Executive Committee Election Integrity Working Group; Bill Sargent)

On — Christina Adkins, Texas Secretary of State; Brandon Moore

DIGEST: CSHB 362 would create a voting system fund administered by the secretary of state from which counties and cities could receive grants to update their voting system equipment. Money in the fund could be appropriated only for such a grant.

The voting system fund, established as an account in the general revenue

fund, would consist of money transferred to the fund at the discretion of the Legislature.

Grants. CSHB 362 would allow counties and cities to apply to the secretary of state for grants from the voting system fund to replace their voting system equipment or to reimburse the replacement or conversion of voting system equipment purchased on or after December 1, 2016. Counties and cities could receive grants to cover up to 50 percent of the total cost of the eligible equipment. "Eligible equipment" would be defined in the bill as voting system equipment that was certified by the U.S. Election Assistance Commission and the secretary of state on the date it was acquired and that used or produced a paper ballot by which a voter could verify that the voter's selections were accurately reflected.

In an application to the secretary of state, counties and cities would have to describe:

- the type of eligible equipment purchased, leased, converted, or proposed for purchase, lease, or conversion;
- the actual or expected total cost of the eligible equipment and any sources of funding used or planned to be used for its purchase, lease, or conversion, in addition to grant funding;
- the county's or city's plan to address the long-term maintenance, repair, and eventual replacement costs of the eligible equipment; and
- any other information required by the secretary of state.

The secretary of state would be required to establish deadlines for receiving the grant applications, procedures for awarding and distributing the grants, and processes for verifying the proper use of the grants after distribution.

If the total amount requested by counties and cities exceeded the total amount available for awarding grants, amounts would be allocated using criteria developed by the secretary of state for the fair and proportional distribution of grants that considered:

- the number of voters likely to be served by the eligible equipment;
- the age and condition of any equipment replaced, converted, or proposed for replacement or conversion;
- the need for equitable distribution of grant funds to both rural and urban counties and cities;
- whether the governing body of a city or county had adopted a reasonable long-term plan to address the maintenance, repair, and eventual replacement needs for the eligible equipment; and
- any other relevant factors.

Study. The bill would require the secretary of state, in cooperation with county officers who administered elections, to conduct a study to determine the best way to fund the voting system fund and make recommendations based on the determinations. The secretary of state would be required to report the study's findings to the committees of each house of the Legislature with jurisdiction over elections by December 31, 2020. This requirement would expire September 1, 2021.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 362 would create a fund from which counties and cities could receive grants to defer some of the costs of replacing outdated voting system equipment.

While the state's election infrastructure is believed to be secure, it is old and in need of replacement. However, many local governments do not have the money to replace their voting machines. Grants issued under the bill would help local governments afford these necessary replacements. The bill also would increase election accountability by requiring that all machines purchased or reimbursed under the created grant program had a verifiable paper trail component. There are not significant cost differences between machines with verifiable paper trail components and those without paper trail components.

The bill would require the secretary of state to consider many different factors when distributing grant funding to counties and cities, allowing for the fair and proportional distribution of funds. The office of the secretary

of state also has experience in grant management and fund distribution, as shown by the office's distribution of federal money associated with the Help America Vote Act to counties in the early 2000s.

OPPONENTS SAY:

CSHB 362 would require the state to spend too much money to update voting system equipment. Many counties already have the funds to update this equipment and do not require state assistance. The bill also would require unnecessary extra spending on machines that produced verifiable paper trails, which cost significantly more than direct electronic recording machines because they require paper and other supplies. The bill also would give too much discretion to the secretary of state to manage the voting system fund and distribute grant money.

SUBJECT: Modifying definition of admitted to hospital for hospital liens

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Leach, Krause, Meyer, Neave, Smith, White

3 nays — Farrar, Y. Davis, Julie Johnson

WITNESSES: For — Louis Bratton and Cesar Lopez, Texas Hospital Association; (*Registered, but did not testify*: Gregg Knaupe, Ascension Seton; Marisa Finley, Baylor Scott and White Health; James Grace Jr., CNA Insurance Companies; Denise Rose, Community Health Systems; Meghan Weller, HCA Healthcare; Martha Doss, Latinos for Trump; Ryan Ambrose, Memorial Hermann Health System; Jessica Schleifer, Teaching Hospitals of Texas; Michelle Apodaca, Tenet; Lee Parsley, Texans for Lawsuit Reform; James Hines, Texas Association of Business; Carol Sims, Texas Civil Justice League; Kevin Reed, Texas Organization of Rural and Community Hospitals; Jake Fuller, UHS, Inc; Cathy DeWitt, USAA; Darwin Hamilton; Denise Seibert)

Against —Will Adams, Texas Trial Lawyers Association; Serena Hood; Christina Knifer; Michael Moore; Cynthia Salgado; Ken Stephenson); (*Registered, but did not testify*: Ware Wendell, Texas Watch; Charlotte Owen; Arthur Simon; Jacqueline Stringer)

BACKGROUND: Property Code sec. 55.002 gives a hospital a lien on a cause of action or claim of an individual who received hospital services for injuries caused by an accident that was attributed to another person's negligence. For the lien to attach, the individual must be admitted to a hospital not later than 72 hours after the accident.

Under sec. 55.003, these liens can attach to:

- causes of action for damages from an injury for which the injured individual was admitted to the hospital or received emergency medical services;
- court judgments or decisions of a public agency in proceedings

brought to recover damages from such an injury; and

- proceeds of a settlement of a cause of action or a claim in these situations.

The hospital lien does not attach to workers' compensation claims or proceeds from insurance policies, except liability insurance carried by the insured to protect against loss caused by accidents or collisions.

Property Code sec. 55.004 has several provisions describing what can be counted toward the amount of the lien. Under sec. 55.004(b), a lien is for the amount of the hospital's charges for services provided to the injured individual during the first 100 days of hospitalization.

DIGEST:

CSHB 2929 would specify that for the purposes of a hospital lien, an injured individual would be considered to have been admitted to a hospital if the individual was allowed access to any department of the hospital for the provision of any treatment, care, or service.

The bill also would specify that a lien would be for the lesser of either the amount of the hospital's charges for services provided to the injured individual during the first 100 days of the individual's hospitalization or 50 percent of all amounts recovered by the injured individual through a cause of action, judgment, or settlement. The bill would expand the list of items that hospital liens did not cover to include charges that were not filed timely were therefore barred from recovery under current law.

CSHB 2929 would state that the changes made by the bill to what is considered admission to the hospital were intended to clarify rather than change existing law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 2929 is needed to clarify that current law allowing hospitals to file liens to recover certain charges applies to emergency room care as well as inpatient care. While many hospitals have assumed that this is the intent of current law, some have faced legal action claiming that hospital liens

are limited to inpatient care and do not cover emergency room care. The bill would clear up this confusion by specifying that the liens apply to any department of a hospital. The bill would not change current law, but merely clarify it.

It is appropriate that these liens apply to emergency care settlements. These are funds that patients have recovered in lawsuits or settlements from the party at fault, and hospitals need to be compensated if possible because a significant portion of the uncompensated care cost burden is borne by taxpayers. Current law limiting these liens protects patients because the liens are not applicable to homes or other types of property. In addition, the bill would revise the limit on the recovery in these suits.

OPPONENTS SAY:

Current law allowing hospital liens applies only to individuals admitted to a hospital and CSHB 2929 would inappropriately expand this to include emergency room care. Many times, patients who are taken to the emergency room after a major accident such as a car wreck suffer lost wages and large hospital bills. Allowing liens in these situations could result in most of the funds from a settlement going to the hospital, rather than being available to meet the necessary expenses of those injured in the accident. Expanding provisions to cover emergency care also could encourage hospitals to file liens after charging excessively large bills and could increase the filing of liens in certain situations, such as after hospitals have been paid through Medicare or insurance.

SUBJECT: Allowing STAAR exams to be administered over multiple days

COMMITTEE: Public Education — committee substitute recommended

VOTE: 12 ayes — Huberty, Bernal, Allen, Allison, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

1 absent — Ashby

WITNESSES: For — (*Registered, but did not testify*; Andrea Chevalier, Association of Texas Professional Educators; Jacquie Benestante, Autism Society of Texas; Chris Masey, Coalition of Texans with Disabilities; Brenda Koegler, League of Women Voters of Texas; Sheri Hicks, Heather Sheffield, and Theresa Trevino, Texans Advocating for Meaningful Student Assessment; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Grover Campbell, Texas Association of School Boards; Lonnie Hollingsworth, Texas Classroom Teachers Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Linda Litzinger, Texas Parent to Parent; Dee Carney, Texas School Alliance; Kristine Garaña; Melisa Markman; Keith O'Brien; Angela Valenzuela)

Against — (*Registered, but did not testify*: Bill Kelberlau; Ronda McCauley)

On — (*Registered, but did not testify*: Eric Marin and Monica Martinez, Texas Education Association)

BACKGROUND: Education Code sec. 39.023 requires the Texas Education Agency (TEA) to adopt and develop appropriate instruments to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. The current testing program is known as the State of Texas Assessments of Academic Readiness, or STAAR.

Each STAAR exam must be given on only one day, and exams must be

designed so that 85 percent of students in grades 3 through 5 would be able to complete an exam within 120 minutes and 85 percent of students in grades 6 through 8 would be able to complete an exam within 180 minutes.

Concerns have been raised that administering a STAAR test in one day can put strain on school schedules and increase pressure on students and teachers.

DIGEST:

CSHB 3906 would allow STAAR exams to be administered in multiple parts over more than one day. End-of-course assessments also could be administered in multiple parts over more than one day, and the requirement that the English I and English II end-of-year assessment instruments assess reading and writing in the same assessment instrument would be eliminated.

The bill would require that exams administered to students in grades 3 through 5 be developed so that 85 percent of students were able to complete all exams for that grade within an aggregate period equal to the number of assessment instruments for the grade multiplied by 120 minutes. Exams administered to students in grades 6 through 8 would have to be developed so that 85 percent of students were able to complete all exams for that grade within an aggregate period equal to the number of assessment instruments for that grade multiplied by 180 minutes.

These provisions would not apply to the classroom portfolio method used to assess writing performance. This assessment method also would be exempted from requirements governing the time of year during which STAAR and end-of-course assessments had to be administered if student performance under the method was less than 50 percent of a student's overall assessed performance in writing.

The classroom portfolio method used to assess the writing performance of significantly cognitively disabled students could require a teacher to prepare tasks and materials.

The bill would apply beginning with the 2019-2020 school year. The commissioner of education would be required to adopt rules as necessary

to implement the bill's changes as soon as practicable after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of $9 million to general revenue related funds through fiscal 2020-21.

SUBJECT: Allowing the use of certain taxes to keep Big Bend National Park open

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Burrows, Guillen, Bohac, Cole, Martinez Fischer, Murphy, Noble, E. Rodriguez, Shaheen

0 nays

2 absent — Sanford, Wray

WITNESSES: For — Robert Alvarez, Brewster County Tourism Council; Justin Bragiel, Texas Hotel and Lodging Association

Against — None

BACKGROUND: Some have suggested that hotel occupancy tax revenues should be used to keep Big Bend National Park open in the event of a federal government shutdown.

DIGEST: HB 4152 would allow a county that bordered Mexico and contained a national park with more than 400,000 acres (Brewster County) to use hotel occupancy tax revenues for certain purposes if the national park (Big Bend National Park) closed or its essential visitor operations were significantly curtailed for more than three consecutive days due to a lack of federal funding or an emergency.

The tax revenues could be used to provide for the supplemental collection of waste, sanitation, and to protect the health, safety, and welfare of park visitors. Revenues also could be used to provide supplemental guidance and interpretive services for park visitors.

The county could enter into an agreement with a federal agency to facilitate the use of the revenues as provided by the bill. The county could not continue to expend revenue for the purposes authorized by the bill if the park was closed for more than 60 days in that fiscal year and could not use revenues in an amount that exceeded the annual area hotel revenue

attributable to visitors to Big Bend National Park.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Removing limits on the use of Alpine's hotel occupancy tax revenues

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Burrows, Guillen, Bohac, Cole, Martinez Fischer, Murphy, Noble, E. Rodriguez, Shaheen

0 nays

2 absent — Sanford, Wray

WITNESSES: For — Justin Bragiel, Texas Hotel and Lodging Association

Against — None

BACKGROUND: Tax Code sec. 351.1035 specifies that the city of Alpine must allocate:

- at least 50 percent of its hotel occupancy tax revenue for advertising and conducting promotional programs to attract tourists and convention delegates or registrants to the city or its vicinity;
- not more than 15 percent of its hotel occupancy tax revenue for the encouragement, promotion, improvement, and application of the arts; and
- not more than 15 percent of its hotel occupancy tax revenue for historical restoration and preservation projects or other programs to encourage tourists and convention delegates to visit certain historic sites or museums.

Some have suggested that Alpine should have more flexibility in how it uses its revenue from hotel occupancy taxes.

DIGEST: HB 4228 would repeal statutory provisions that limit how the city of Alpine may use hotel occupancy tax revenue.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Prohibiting certain requirements before paying UIM insurance claims

COMMITTEE: Insurance — favorable, without amendment

VOTE: 5 ayes — Lucio, Oliverson, Julie Johnson, Lambert, C. Turner

0 nays

4 absent — G. Bonnen, S. Davis, Paul, Vo

WITNESSES: For — Craig Eiland and Will Adams, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; Michael Andrade; Scott Lidji; Seth McCloskey; Paula Mentzer; Rebekah Rogers; (*Registered, but did not testify*: Steve Bresnen, Texas Trial Lawyers Association)

Against — Jay Thompson, AFACT; Emily Stroup; (*Registered, but did not testify*: Joe Woods, American Property Casualty Insurance Association; John Marlow, Chubb; Paul Martin, National Association of Mutual Insurance Companies; Connie Johnson, Progressive; Lee Parsley, Texans for Lawsuit Reform; Jessica Boston, Texas Association of Business; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Marti Luparello, Texas Farm Bureau Insurance Companies; Kari King, USAA)

On — (*Registered, but did not testify*: Marianne Baker, Texas Department of Insurance)

DIGEST: HB 1739 would prohibit an insurer, as a prerequisite to asserting a claim under uninsured or underinsured motorist (UIM) coverage, from requiring a judgment or other legal determination establishing the liability or uninsured or underinsured status of another motorist. A judgment or other legal determination would not be a prerequisite to having a claim alleging unfair methods of competition or failure to promptly pay claims.

An insurer also could not, as a prerequisite to payment of benefits under UIM coverage, require a judgment or other legal determination establishing another motorist's liability or the extent of the insured's

damages before benefits were paid under the policy.

An insurer would be required to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim once liability and damages had become reasonably clear.

The bill would establish that a claimant provided notice of a claim, including a claim alleging unfair methods of competition or failure to promptly pay claims, for UIM coverage by providing written notification to the insurer that reasonably informed the insurer of the facts of the claim.

Prejudgment interest would begin accruing on a UIM claim on the earlier of the 180th day after the claimant provided notice of a claim or the date suit was filed against the insurer.

For purposes of recovering attorney's fees, a claim for UIM coverage would be presented when the insurer received notice of the claim.

The bill would take effect September 1, 2019, and the change in law would apply only to a cause of action that accrued on or after the effective date, except that the bill would not affect the enforceability of any provision in an insurance policy delivered, issued for delivery, or renewed before January 1, 2020, that conflicted with this bill.

SUPPORTERS SAY:

HB 1739 would reduce litigation and would restore policyholders' legal rights in relation to their insurers when they purchased uninsured or underinsured motorist (UIM) coverage.

The Texas Supreme Court in *Brainard v. Trinity Universal Ins. Co.* (2006) held that an uninsured or underinsured motorist insurer is under no contractual duty to pay benefits until the insured obtained a judgment establishing the liability and underinsured status of the other motorist. That decision has caused delay, expense, and hardship for policyholders.

Policyholders in Texas currently are forced to sue their insurance company and obtain a judgment in court before their insurer is obligated

to pay UIM policy benefits. The policyholder could have paid premiums on the policy for years only to be denied coverage when they need it most.

The bill also would allow policyholders the possibility of recovering attorney's fees. Under current law, if the insurer is ever forced to pay, payment is limited to what was originally owed, and the policyholder is never made whole due to litigation expenses.

Concerns that the bill would lead to increased litigation due to its references to the Insurance Code and attorney's fees provisions could be addressed in a floor amendment.

OPPONENTS SAY:

HB 1739 could have the unintended effect of actually encouraging more litigation by making overbroad references to the Insurance Code and reversing the *Brainard* decision on attorney's fees.

NOTES:

The author intends to offer a floor amendment that would strike provisions of HB 1739 and substitute the following:

- for the purpose of an unfair settlement practice under Insurance Code sec. 541.060, an insured could provide notice of a claim for UIM coverage by providing a written notification to the insurer that reasonably informed the insurer of the facts of the claim;
- a judgment or other legal determination establishing the other motorist's liability or the extent of the insured's damages would not be a prerequisite to recovery in a private action for damages under Insurance Code sec. 541.151 for a violation of the statute prohibiting unfair settlement practices; and
- in regard to a claim for UIM coverage, the only extra-contractual cause of action available to an insured would be provided by Insurance Code sec. 541.151 to recover damages for a violation of an unfair settlement practice under Insurance Code sec. 541.060.

SUBJECT: Creating the Cameron County Flood Control District

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Larson, Metcalf, Dominguez, Farrar, Harris, Lang, Nevárez, Price, Ramos

0 nays

2 absent — T. King, Oliverson

WITNESSES: For — Sofia C Benavides, David Garza, Paolina Vega, Cameron County; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Dan Shelley, Brazoria County Judge Matt Sebesta; David Garcia, Cameron County; Adam Haynes, Conference of Urban Counties; Jim Short, Fort Bend County; Donna Warndof, Harris County Flood Control District; Rick Thompson, Texas Association of Counties; Scot Campbell; David Fuentes)

Against — Sonia Lambert, Cameron County Drainage District #3; Wayne Halbert, Cameron County Drainage District #3 and Harlingen Irrigation District Cameron County #1; Alan Moore, Cameron County Drainage District #5

On — Brian Macmanus

BACKGROUND: Concerned parties have noted that Cameron County currently lacks integrated flood mitigation infrastructure and there are gaps within the county between the jurisdictions of local drainage districts. As Cameron County is also in a low-lying coastal area prone to flooding, it has been suggested that the county would benefit from the creation of a flood control district.

DIGEST: CSHB 4726 would create the Cameron County Flood Control District and specify its powers and duties.

The district would have the rights, powers, privileges, and functions of a

levee improvement district, and its boundaries would be coextensive with Cameron County, excluding any territory already under the jurisdiction of a drainage or irrigation district. The district would have to obtain approval of the relevant authority before annexing land inside the corporate limits of a municipality or inside the boundaries of a drainage or irrigation district.

The district's board of directors would consist of the five county commissioners of Cameron County, and the directors' terms would correspond to the terms of the county commissioners.

The district could impose a maintenance tax authorized by an election held in the district and would be authorized to issue bonds and incur other indebtedness. Bond anticipation notes could be issued for any purpose for which district bonds had been voted or to refund outstanding bond anticipation notes plus interest.

The bill would allow the created district to enter into contracts for the maintenance or construction of any authorized facility or improvement without voting for the issuance of bonds or holding an election to approve the contract.

If the bill passed with a two-thirds majority of all members elected to each house, the district could exercise the power of eminent domain in Cameron County. Any act of eminent domain within a municipality’s borders would have to be approved by a resolution of the municipality's governing body. If the bill did not pass with the necessary majority, the district would be prohibited from exercising the power of eminent domain.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Requiring certain attorneys to complete training on trauma-informed care

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 7 ayes — Dutton, Bowers, Calanni, Dean, Lopez, Shine, Talarico

0 nays

2 absent — Murr, Cyrier

WITNESSES: For — Doreen Sims, Stop Abuse Campaign; Patricia Hogue, Texas Lawyers For Children; Mary Christine Reed, Texas RioGrande Legal Aid; (*Registered, but did not testify*: Chris Masey, Coalition of Texans with Disabilities; Aaryce Hayes, Disability Rights Texas; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Andrew Homer, Texas CASA; Jose Flores, Texas Criminal Justice Coalition)

Against — None

BACKGROUND: Family Code sec. 107.004 requires attorneys on the court-maintained list of qualified attorneys ad litem for children in child protection cases to complete at least three hours of continuing legal education relating to the representation of children each year.

Some have suggested that the Texas child welfare system should include more training on trauma-informed care.

DIGEST: HB 1916 would require an attorney who was on the court-maintained list of qualified attorneys ad litem for children in child protection cases to provide proof that the attorney had completed a training program on trauma-informed care and the effect of trauma on children in the conservatorship of the Department of Family and Protective Services. An attorney would have to complete such training before being appointed as an attorney ad litem for a child in a child protection case.

The training required by the bill would have to include information on:

- the impact of trauma on a child, including how trauma could affect a child's memories, behavior, and decision-making;
- attachment and how a lack of attachment could affect a child;
- how trauma-informed care and services could help a child build resiliency and overcome the effects of trauma and adverse childhood experiences;
- the importance of screening children for trauma and the risk of mislabeling and inappropriate treatment of children without proper screening, including increasing the use of psychotropic medications;
- the potential for re-traumatization of children in the conservatorship of the Department of Family and Protective Services; and
- the availability of research-supported, trauma-informed, non-pharmacological interventions and trauma-informed advocacy to increase a child's access to trauma-informed care and mental and behavioral health services.

The Texas Supreme Court would have to adopt rules to provide for this training by December 1, 2019. In adopting the rules, the court would be required to consult with the Texas Center for the Judiciary; the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families; and the Child Protection Law Section of the State Bar of Texas.

The bill also would require the state bar to count this training toward the bar's minimum continuing legal education requirements for the reporting year in which the training was completed.

The bill would take effect September 1, 2019, and would require that attorneys on the court-maintained list on that date complete the required training by September 1, 2020.

SUBJECT: Prohibiting cities and counties from adopting labor peace agreements

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Button, Shaheen, Middleton, Patterson, Swanson

4 nays — J. González, Goodwin, E. Johnson, Morales

0 absent

WITNESSES: For — Ellen Troxclair; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; Corbin Van Arsdale, Associated General Contractors-Texas Building Branch; Adam Cahn, Cahnman's Musings; Annie Spilman, NFIB; James Hines, Texas Association of Business; Lisa Fullerton; David King)

Against — Susana Carbajal, City of Austin; Rick Levy, Texas AFL-CIO; (*Registered, but did not testify*: David King)

DIGEST: CSHB 3439 would prohibit cities and counties from adopting or enforcing an ordinance, order, or other measure that required a person to enter into a labor peace agreement or similar arrangement as a condition of being considered for or awarded a contract or otherwise engaging in a commercial transaction with the city or county.

The bill would define a "labor peace agreement" as an agreement between a person and the person's employees or an entity that represents or seeks to represent those employees that limits or otherwise interferes with the rights of the person under federal labor law.

The bill would take effect September 1, 2019, and would only apply to a contract entered into or renewed on or after that date.

SUPPORTERS SAY: CSHB 3439 would prevent cities and counties from requiring employers to give up rights guaranteed in federal law to benefit labor unions. Local governments in the past have required labor peace agreements when they had financial or other interest in a particular facility or project, typically

an airport, hotel, casino, or other hospitality-related facility. These agreements generally require the union to agree not to engage in strikes or other workplace disruptions in the interest of guaranteeing continued service in these areas. In exchange, the employer often will agree to provisions that can include requiring that any unionization vote take place by card-check rather than secret ballot, remaining neutral on unionization, or giving union organizers access to the workplace.

Some of these employer concessions, however, represent rights that are protected by federal law. Cities and counties should not require the alienation of guaranteed rights as a condition of doing business. The bill's definition of labor peace agreement would ensure that the only agreements that were prohibited were those that required employers to give up federally guaranteed rights.

In cities and counties with these agreements, non-union employers are effectively excluded from getting government work, and unions enjoy more leverage than they might otherwise, leading to employers who want to compete for government contracts feeling compelled to grant concessions to unions that they would otherwise not be inclined to make.

Cities and counties empower labor unions at the expense of employers. By prohibiting cities and counties from requiring labor peace agreements, the bill would allow individuals and companies to enjoy their guaranteed rights and would ensure a level economic playing field.

OPPONENTS SAY:

CSHB 3439 would deny cities and counties the ability to determine the labor policies that work best for them. The primary purpose of a labor peace agreement is to prevent labor disruptions and ensure the public has continued access to important services. This is a valid goal, and cities and counties should be allowed to use this tool to pursue it.

SUBJECT: Allowing patient access to physical therapy without a prior referral

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — S. Thompson, Wray, Allison, Coleman, Frank, Guerra, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Lucio

WITNESSES: For — Benjamin Keene, Mark Milligan, and Craig Tounget, Texas Physical Therapy Association; (*Registered, but did not testify*: Ben Shook, Axiom Physiotherapy; Anne Dunkelberg, Center for Public Policy Priorities; Chase Bearden, Coalition of Texans with Disabilities; Steve Koebele, Concentra; Josiah Neeley, R Street Institute; Justin Yancy, Texas Business Leadership Council; Mia McCord, Texas Conservative Coalition; Don McBeath, Texas Organization of Rural and Community Hospitals; James Harris, Texas Physical Therapy Association; Jennifer Minjarez, Texas Public Policy Foundation; Blaze Huber, The Training Room; and nine individuals)

Against — Eugene Stautberg, Texas Medical Association, Texas Orthopaedic Association; Joseph Mathews, Texas Orthopaedic Association; (*Registered, but did not testify*: Marshall Kenderdine, Texas Academy of Family Physicians; Price Ashley, Texas College of Emergency Physicians; Dan Finch, Texas Medical Association; Rachael Reed, Texas Ophthalmological Association; Bobby Hillert, Texas Orthopaedic Association; Jill Sutton, Texas Osteopathic Medical Association; Clayton Travis, Texas Pediatric Society; Bonnie Bruce, Texas Society of Anesthesiologists; Ellis Doan; Fatemeh Rezaee; Reza Rezaee; Ziba Rezaee)

BACKGROUND: Occupations Code sec. 453.301 permits a physical therapist to treat a patient for an injury or condition that was the subject of a prior referral if the physical therapist:

- has been licensed to practice physical therapy for at least one year;
- notified the referring practitioner of the therapy by the fifth business day after date therapy is begun;
- begins any episode of treatment before the first anniversary of the referral by the referring practitioner;
- treats the patient for not more than 20 treatment session or 30 consecutive calendar days, whichever occurs first, after the physical therapy episode initiated by the referral; and
- satisfies any other requirement set by the Texas Board of Physical Therapy Examiners.

Sec. 453.203 requires applicants for a physical therapist license to present evidence to the board that the applicant has completed an accredited physical therapy educational program or has completed a program equivalent to a Commission on Accreditation in Physical Therapy Education accredited program.

DIGEST:

CSHB 29 would allow qualified physical therapists to treat a patient for an injury or condition without a referral for up to 10 or 15 consecutive business days, depending on their qualifications.

In order to treat a patient without a referral, a physical therapist would have to have been licensed to practice physical therapy for at least one year and be covered by professional liability insurance in the minimum amount required by the Texas Board of Physical Therapy Examiners. A physical therapist also would have had to either possess a doctoral degree in physical therapy from an accredited program or institution or have completed at least 30 hours of continuing competence activities in the area of differential diagnosis.

Physical therapists who possessed a doctoral degree in physical therapy from an accredited program or institution and had completed a residency or fellowship could treat patients without a referral for up to 15 consecutive business days. Otherwise, a physical therapist could treat patients for up to 10 consecutive business days.

A physical therapist who treated a patient without a referral would have to

obtain a signed disclosure from the patient that acknowledged that:

- physical therapy was not a substitute for a medical diagnosis by a physician;
- physical therapy was not based on radiological imaging;
- a physical therapist could not diagnose an illness or disease; and
- that the patient's health insurance might not cover the physical therapist's services.

The Texas Board of Physical Therapy Examiners would have to adopt rules necessary to implement the bill by November 1, 2019.

The bill would take effect September 1, 2019, and would apply only to treatment provided by a physical therapist on or after November 1, 2019.

SUPPORTERS SAY:

CSHB 29 would allow patients to make their own decisions about their health care, lower treatment costs, decrease the use of opioids and other pain killers, and bring Texas in line with the vast majority of states that allow direct access to physical therapy treatment.

Requiring patients to schedule a doctor's appointment before being able to see a physical therapist creates an unnecessary delay in treatment that costs time and money. Because early intervention leads to better health outcomes, these delays can have significant consequences for patients' well-being. In addition, patients who receive physical therapy earlier are less likely to be prescribed and become dependent upon opioids for pain relief, so providing quicker access to physical therapy for patients who need it could lower the prevalence of opioid use for certain patients.

Texas is one of the only states that does not allow patients to be treated by a physical therapist without a prior referral, and the U.S. military has allowed direct access to physical therapy since the 1970s. The bill would allow patients more timely access to physical therapy when it was needed without creating further risks to the health or safety of those patients. Permitting only 10 to 15 days of treatment by a physical therapist before requiring a physician's referral would ensure that patients with conditions that required a medical diagnosis or imaging would receive needed care.

OPPONENTS SAY:

CSHB 29 would create a risk to patients by allowing them to seek treatment before receiving a medical diagnosis. A proper medical screening that includes diagnostic tools and imaging is necessary before treatment can be prescribed, and physical therapists do not have the training or tools to provide such a screening. Patients with serious maladies that presented as simple soreness or aches could seek treatment from a physical therapist without receiving a needed diagnosis, which could result in negative health outcomes.

SUBJECT: Requiring DSHS to administer investigational adult stem cell treatments

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — S. Thompson, Wray, Allison, Coleman, Frank, Guerra, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Lucio

WITNESSES: For — Michelle Wittenburg, KK125 Ovarian Cancer Research Foundation; Tracy Thompson and Jennifer Ziegler, Patients For Stem Cells; (*Registered, but did not testify*: Carmen Cernosek; Rick Hardcastle)

Against — Mary Pat Moyer, InCell; David Bales, Texans for Cures

On — Sheila Hemphill, Texas Right To Know; (*Registered, but did not testify*: Manda Hall and Barbara Klein, Department of State Health Services)

BACKGROUND: Health and Safety Code ch. 1003, subch. B allows patients with certain severe chronic diseases or terminal illnesses to use investigational adult stem cell treatment, which is a treatment in a clinical trial and that has not yet been approved for general use by the U.S. Food and Drug Administration. Sec. 1003.055(d) requires an institutional review board that oversees investigational stem cell treatments to be affiliated with a medical school in Texas or a licensed hospital that has at least 150 beds.

Sec. 1003.058 prohibits a governmental entity or its employee from interfering with an eligible patient's access to or use of an authorized stem cell treatment.

Sec. 1003.054(c) allows the executive commissioner of the Health and Human Services Commission by rule to adopt an informed consent form required to be signed by eligible patients before receiving investigational stem cell treatment.

DIGEST:

CSHB 3148 would require the Department of State Health Services (DSHS) to oversee the provision of investigational stem cell treatments to patients with certain severe chronic diseases or terminal illnesses.

The bill would require an institutional review board to meet one of the following conditions:

- be affiliated with a medical school in Texas or licensed hospital with at least 150 beds;
- be accredited by the Association for the Accreditation of Human Research Protection Programs;
- be registered by the U.S. Department of Health and Human Services' Office for Human Research Protections; or
- be accredited by a national accreditation organization acceptable to DSHS.

Unless the patient's treatment used an adult stem cell product that was considered an adulterated or misbranded drug, the bill would prohibit a governmental entity or its employee from interfering with an eligible patient's access to or use of an authorized investigational stem cell treatment.

The bill would require the executive commissioner of the Health and Human Services Commission by rule to adopt an informed consent form required to be signed by eligible patients before receiving investigational stem cell treatment. The form would have to provide notice that DSHS would be governing the provision of investigational stem cell treatments.

The bill's provisions could not be construed to prohibit a physician from using adult stem cells for their intended homologous use if the stem cells were produced by a registered U.S. Food and Drug Administration (FDA) manufacturer and commercially available. The bill's provisions also could not be construed to require an institutional review board to oversee treatment using adult stem cells registered by the FDA for their intended homologous use.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 3148 would clarify existing law for patients and providers regarding investigational stem cell treatment. The bill would improve patient safety by allowing a governmental entity to interfere with the treatment if the treatment used an adult stem cell product considered to be adulterated or misbranded under the Texas Food, Drug, and Cosmetic Act. Expanding the list of affiliated institutional review boards that could oversee investigational stem cell treatments would increase patients' access to these lifesaving treatments. The institutional review boards would still be required to comply with the Texas Medical Board's adopted rules.

OPPONENTS SAY:

CSHB 3148 could create more confusion about stem cell treatment terminology for patients and providers. Expanding the list of authorized institutional review boards could make it more difficult to regulate fraudulent clinics providing expensive or unauthorized treatments for patients, increasing potential harm to patients. The Texas Medical Board, rather than the Department of State Health Services, would be the more appropriate agency to oversee investigational stem cell treatment.